

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

CHARLES BATCH,

Defendant-Appellant,

and

LISA HARDEN,

Defendant.

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UNPUBLISHED  
February 15, 2005

No. 251340  
Oakland Circuit Court  
LC No. 2002-044739-CZ

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Batch appeals as of right the order granting plaintiff's motion for summary disposition in this declaratory judgment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Lisa Harden filed a tort action in Nevada against defendant Batch and others, asserting claims of assault and battery, false imprisonment, intentional infliction of emotional distress, and negligence. Harden asserted that Batch and others drugged her at a Las Vegas casino restaurant, took her to an apartment where they repeatedly sexually assaulted her, then returned her to the casino, where they continued to sexually assault her.

Batch tendered the defense of the tort action to plaintiff, who insured him under a renter's insurance policy and a personal umbrella policy. Plaintiff filed this action for declaratory relief, asserting that the injuries to Harden did not arise out of an "occurrence" as defined by the policies. The trial court found that the allegations in the underlying complaint concerned intentional acts that could not be accidental and granted plaintiff's motion for summary disposition.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the

motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). This Court reviews the grant or denial of a summary disposition motion de novo. *Allstate Ins Co v JJM*, 254 Mich App 418, 421; 657 NW2d 181 (2002). The interpretation of an insurance contract is a question of law that is also reviewed de novo. *Id.*

An insurer's duty to defend an insured is not limited to meritorious suits and may extend to actions that are groundless, as long as the allegations against the insured arguably come within the policy coverage. *Auto Club Ins Co v Burchell*, 249 Mich App 468, 480-481; 642 NW2d 406 (2002). If no theories of recovery fall within the policy, the insurer does not have a duty to defend. *Id.*

Here, both policies provide coverage for injury that results from an occurrence. The renter's policy defined occurrence as:

an accident, including continuous or repeated exposure to substantially the same general harmful conditions, during the policy period, resulting in bodily injury or property damage.

The term occurrence is defined in the umbrella policy as, "an accident or continuous exposure to conditions."

While the term accident is not defined in the policies, the Supreme Court has defined an accident as "an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected." *Frankenmuth Mutual Ins Co v Masters*, 460 Mich 105, 114; 595 NW2d 832 (1999).

The duty of the insurer to defend depends upon the allegation in the complaint of the third party against the insured. *Smorch v Auto Club Group Ins Co*, 179 Mich App 125, 128; 445 NW2d 192 (1989). However, no duty to defend arises where the complaint is a transparent attempt to trigger insurance coverage by characterizing tortious conduct as negligent activities. *Id.*, 128-129.

The allegations in the underlying complaint do not describe any accidental activity. Harden alleged that defendant drugged her, repeatedly sexually assaulted her, refused to release her and continued to assault her, engaged in intentional extreme and outrageous conduct, and negligently failed to act in a reasonable manner or exercise ordinary care and failed to render assistance to her during the attack. As in *Smorch*, the claim of negligence is a transparent attempt to trigger insurance coverage.

Defendant also asserts that because the umbrella policy addresses claims of false imprisonment, there is a question of fact concerning possible coverage. The definition of personal injury in the umbrella policy includes false arrest, false imprisonment, and wrongful detention in addition to bodily injury. However, while false imprisonment may be a form of personal injury covered by the policy, it must arise out of an occurrence, which is defined as an

accident in the umbrella policy. Thus, the policy only covers false imprisonment that occurs accidentally. This is not what is alleged in the underlying complaint.

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Kathleen Jansen